

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

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INDIRA BOWEN, Individually, and  
INDIRA BOWEN, on behalf of her minor  
children, RAYLYN FAIRCLOUGH and  
MIA BOWEN,

Plaintiffs,

v.

THE COUNTY OF WESTCHESTER,  
TOWN OF GREENBURGH, POLICE  
OFFICERS JOHN DOES 1-10, in their  
individual and official capacities,

Defendants.

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Civil Action No.: 07 CIV 6277

**ANSWER TO PLAINTIFFS' FIRST  
AMENDED COMPLAINT**

Defendant, TOWN OF GREENBURGH, by and through its attorneys, Callahan & Fusco, LLC, as and for its Answer to plaintiffs' First Amended Complaint, responds upon information and belief as follows:

**NATURE OF THE ACTION**

1. Defendant denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph "1" of the First Amended Complaint and refers all questions and interpretations of law to the court.

**JURISDICTION AND VENUE**

2. Defendant denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph "2" of the First Amended Complaint and refers all questions and interpretations of law to the court.

3. Defendant denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph "3" of the First Amended Complaint and refers all questions and interpretations of law to the court.

**PARTIES**

4. Defendant denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph "4" of the First Amended Complaint.

5. Defendant denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph "5" of the First Amended Complaint.

6. Defendant denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph "6" of the First Amended Complaint.

7. Defendant denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph "7" of the First Amended Complaint.

8. Defendant denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph "8" of the First Amended Complaint.

9. Defendant admits the allegations contained in paragraph "9" to the extent that the Town of Greenburgh is a municipal corporation within the State of New York and that the Town of Greenburgh has established and maintained a police department. Defendant denies knowledge or information sufficient to form a belief as to the truth of the remaining allegations contained in paragraph "9" of the First Amended Complaint.

10. Defendant denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph "10" of the First Amended Complaint.

11. Defendant denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph "11" of the First Amended Complaint.

12. Defendant denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph "12" of the First Amended Complaint.

**NOTICES OF CLAIM**

13. Defendant admits the allegations contained in paragraph "13" to the extent that a Notice of Claim against the Town of Greenburgh was received within 90 days of the event that forms the basis of plaintiffs' First Amended Complaint. Defendant denies knowledge or information sufficient to form a belief as to the truth of the remaining allegations contained in paragraph "13" of the First Amended Complaint.

14. Defendant admits the allegations contained in paragraph "14" to the extent that the Notice of Claim received by the Town of Greenburgh was in writing and contained the name and post office addresses of the named plaintiffs. Defendant denies the remaining allegations contained in paragraph "14" of the First Amended Complaint.

15. Defendant denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph "15" of the First Amended Complaint.

16. Defendant denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph "16" of the First Amended Complaint and refers all questions and interpretations of law to the court.

17. Defendant denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph "17" of the First Amended Complaint and refers all questions and interpretations of law to the court.

**FACTS**

18. Defendant denies the allegations contained in paragraph "18" of the First Amended Complaint and refers all questions and interpretations of law to the court.

19. Defendant denies the allegations contained in paragraph "19" of the First Amended Complaint and refers all questions and interpretations of law to the court.

20. Defendant denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph "20" of the First Amended Complaint.

21. Defendant denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph "21" of the First Amended Complaint.

22. Defendant denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph "22" of the First Amended Complaint.

23. Defendant denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph "23" of the First Amended Complaint and refers all questions and interpretations of law to the court.

24. Defendant denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph "24" of the First Amended Complaint and refers all questions and interpretations of law to the court.

25. Defendant denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph "25" of the First Amended Complaint.

26. Defendant denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph "26" of the First Amended Complaint and refers all questions and interpretations of law to the court.

27. Defendant denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph "27" of the First Amended Complaint and refers all questions and interpretations of law to the court.

28. Defendant denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph "28" of the First Amended Complaint and refers all questions and interpretations of law to the court.

29. Defendant denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph "29" of the First Amended Complaint.

30. Defendant denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph "30" of the First Amended Complaint and refers all questions and interpretations of law to the court.

**AS AND FOR AN ANSWER TO THE FIRST CAUSE OF ACTION**

31. Defendant repeats, reiterates, and realleges each and every answer contained in Paragraphs 1-30 of this Answer with the same force and effect as if set forth more fully at length herein.

32. Defendant denies the allegations contained in paragraph "32" of the First Amended Complaint to the extent they are directed toward the defendant Town of Greenburgh,, denies knowledge or information sufficient to form a belief as to the truth of the allegations to the extent they refer to defendant County of Westchester, and refers all questions and interpretations of law to the court.

33. Defendant denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph "33" of the First Amended Complaint.

34. Defendant denies the allegations contained in paragraph "34" of the First Amended Complaint to the extent they are directed toward the defendant Town of Greenburgh, denies knowledge or information sufficient to form a belief as to the truth of

the allegations to the extent they refer to defendant County of Westchester, and refers all questions and interpretations of law to the court.

35. Defendant denies the allegations contained in paragraph "35" of the First Amended Complaint to the extent they are directed toward the defendant Town of Greenburgh, denies knowledge or information sufficient to form a belief as to the truth of the allegations to the extent they refer to defendant County of Westchester, and refers all questions and interpretations of law to the court.

36. Defendant denies the allegations contained in paragraph "36" of the First Amended Complaint to the extent they are directed toward the defendant Town of Greenburgh, denies knowledge or information sufficient to form a belief as to the truth of the allegations to the extent they refer to defendant County of Westchester, and refers all questions and interpretations of law to the court.

37. Defendant denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph "37" of the First Amended Complaint.

**AS AND FOR AN ANSWER TO THE SECOND CAUSE OF ACTION**

38. Defendant repeats, reiterates, and realleges each and every answer contained in Paragraphs 1-37 of this Answer with the same force and effect as if set forth more fully at length herein.

39. Defendant denies the allegations contained in paragraph "39" of the First Amended Complaint to the extent they are directed toward the defendant Town of Greenburgh, denies knowledge or information sufficient to form a belief as to the truth of the allegations to the extent they refer to defendant County of Westchester, and refers all

questions and interpretations of law to the court.

40. Defendant denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph "40" of the First Amended Complaint.

**AS AND FOR AN ANSWER TO THE THIRD CAUSE OF ACTION**

41. Defendant repeats, reiterates, and realleges each and every answer contained in Paragraphs 1-40 of this Answer with the same force and effect as if set forth more fully at length herein.

42. Defendant denies the allegations contained in paragraph "42" of the First Amended Complaint to the extent they are directed toward the defendant Town of Greenburgh, denies knowledge or information sufficient to form a belief as to the truth of the allegations to the extent they refer to defendant County of Westchester, and refers all questions and interpretations of law to the court.

43. Defendant denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph "43" of the First Amended Complaint.

**AS AND FOR AN ANSWER TO THE FOURTH CAUSE OF ACTION**

44. Defendant repeats, reiterates, and realleges each and every answer contained in Paragraphs 1-43 of this Answer with the same force and effect as if set forth more fully at length herein.

45. Defendant denies the allegations contained in paragraph "45" of the First Amended Complaint to the extent they are directed toward the defendant Town of Greenburgh, denies knowledge or information sufficient to form a belief as to the truth of

the allegations to the extent they refer to defendant County of Westchester, and refers all questions and interpretations of law to the court.

46. Defendant denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph "46" of the First Amended Complaint.

**AS AND FOR AN ANSWER TO THE FIFTH CAUSE OF ACTION**

47. Defendant repeats, reiterates, and realleges each and every answer contained in Paragraphs 1-46 of this Answer with the same force and effect as if set forth more fully at length herein.

48. Defendant denies the allegations contained in paragraph "48" of the First Amended Complaint to the extent they are directed toward the defendant Town of Greenburgh, denies knowledge or information sufficient to form a belief as to the truth of the allegations to the extent they refer to defendant County of Westchester, and refers all questions and interpretations of law to the court.

49. Defendant denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph "49" of the First Amended Complaint.

**AS AND FOR AN ANSWER TO THE SIXTH CAUSE OF ACTION**

50. Defendant repeats, reiterates, and realleges each and every answer contained in Paragraphs 1-49 of this Answer with the same force and effect as if set forth more fully at length herein.

51. Defendant denies the allegations contained in paragraph "51" of the First Amended Complaint to the extent they are directed toward the defendant Town of Greenburgh, denies knowledge or information sufficient to form a belief as to the truth of



the allegations to the extent they refer to defendant County of Westchester, and refers all questions and interpretations of law to the court.

52. Defendant denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph "52" of the First Amended Complaint.

**AS AND FOR AN ANSWER TO THE SEVENTH CAUSE OF ACTION**

53. Defendant repeats, reiterates, and realleges each and every answer contained in Paragraphs 1-52 of this Answer with the same force and effect as if set forth more fully at length herein.

54. Defendant denies the allegations contained in paragraph "54" of the First Amended Complaint to the extent they are directed toward the defendant Town of Greenburgh, denies knowledge or information sufficient to form a belief as to the truth of the allegations to the extent they refer to defendant County of Westchester, and refers all questions and interpretations of law to the court.

55. Defendant denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph "55" of the First Amended Complaint.

**AS AND FOR AN ANSWER TO THE EIGHTH CAUSE OF ACTION**

56. Defendant repeats, reiterates, and realleges each and every answer contained in Paragraphs 1-55 of this Answer with the same force and effect as if set forth more fully at length herein.

57. Defendant denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph "57" of the First Amended Complaint.

58. Defendant denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph "58" of the First Amended Complaint.

59. Defendant denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph "59" of the First Amended Complaint.

60. Defendant denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph "60" of the First Amended Complaint.

**AS AND FOR A FIRST AFFIRMATIVE DEFENSE**

The First Amended Complaint fails to set forth a cause of action upon which relief may be granted.

**AS AND FOR A SECOND AFFIRMATIVE DEFENSE**

The applicable law, statute or regulation, including but not limited to the Statute of Limitations, controlling or requiring the institution of suit within a certain period of time following its accrual, was not complied with by the claimants, and accordingly, plaintiffs' action is barred as a matter of law.

**AS AND FOR A THIRD AFFIRMATIVE DEFENSE**

Plaintiffs have failed to join all persons and/or entities necessary for the just adjudication of this action.

**AS AND FOR A FOURTH AFFIRMATIVE DEFENSE**

Any and all actions complained of were performed by the answering defendant in conformance with the laws and Constitutions of the United States and New York and the Town of Greenburgh Police Department's rules and regulations, which permitted the search of plaintiffs' residence.

**AS AND FOR A FIFTH AFFIRMATIVE DEFENSE**

Any conduct which is alleged by plaintiffs is *de minimis* and insubstantial and as such the allegations fail to establish a claim under 42 U.S.C. Section 1983.

**AS AND FOR A SIXTH AFFIRMATIVE DEFENSE**

The actions complained of were caused in whole or in part by culpable conduct and actions attributable to the plaintiffs including contributory negligence and/or illegal activities and that by reason thereof, the amount of damages recoverable, if any, shall be diminished in whole or in part by that portion to which plaintiffs' culpable conduct bears on the alleged conduct of the answering defendant which allegedly caused the damages.

**AS AND FOR A SEVENTH AFFIRMATIVE DEFENSE**

Any acts allegedly performed by the answering defendant were protected by qualified immunity and/or privilege as provided by law.

**AS AND FOR AN EIGHTH AFFIRMATIVE DEFENSE**

The answering defendant denies that it committed any culpable acts as alleged in the First Amended Complaint other than to properly search plaintiffs' residence; if, however, it is determined that the answering defendant did commit culpable acts as alleged in the First Amended Complaint, then all such acts were committed and performed in good faith and without malice and with reasonable and probable cause and in the performance of its duties and obligations.

**AS AND FOR A NINTH AFFIRMATIVE DEFENSE**

The Town of Greenburgh did not promulgate or permit any official municipal policy, practice, or custom which resulted in the deprivation of plaintiffs' Constitutional rights.

**AS AND FOR A TENTH AFFIRMATIVE DEFENSE**

The defendant is not a proper party to this action, and thus, the First Amended Complaint should be dismissed.

**AS AND FOR AN ELEVENTH AFFIRMATIVE DEFENSE**

To the extent that plaintiffs have received reimbursement for all or a part of the damages claimed, plaintiff should be stopped from asserting the same herein.

**AS AND FOR A TWELFTH AFFIRMATIVE DEFENSE**

While any liability is expressly denied, any search, detention, or entry was based on a valid search warrant, and as such, no liability can attach to the defendant.

**AS AND FOR A THIRTEENTH AFFIRMATIVE DEFENSE**

While liability is expressly denied, any action taken on behalf of the defendant, concerning the First Amended Complaint, was not grossly negligent or reckless, and as such, no liability can attach.

**AS AND FOR A FOURTEENTH AFFIRMATIVE DEFENSE**

At all times, the Town of Greenburgh lawfully and properly maintained a police department as provided under and by the laws of the State of New York and, as part of their obligations, the Town's police officers were obligated pursuant to applicable laws to detect and suppress crime and to apprehend violators of the laws of the State of New York.

**AS AND FOR A FIFTEENTH AFFIRMATIVE DEFENSE**

The Town of Greenburgh denies committing any culpable acts as alleged in the Verified Complaint other than to properly search plaintiffs' residence; if, however, it is determined that culpable acts did occur, all acts performed by the Town of Greenburgh in the hiring, training, supervising and assigning of its employees were performed in good faith with reasonable care and without malice.

**AS AND FOR A SIXTEENTH AFFIRMATIVE DEFENSE**

No private right of action exists for violations of the New York State Constitution where a plaintiff has alternative damage remedies available, as plaintiffs do here under their § 1983 claims.

**AS AND FOR AN SEVENTEENTH AFFIRMATIVE DEFENSE**

The defendant cannot be liable under a theory of *respondeat superior* as a matter of law.

**WHEREFORE**, the defendant Town of Greenburgh prays judgment that the First Amended Complaint of the plaintiffs be dismissed, together with the costs and disbursements of this action and attorney's fees awarded to the defendant.

Dated: East Hanover, New Jersey  
August 7, 2008

Callahan & Fusco, LLC  
Attorneys for Defendant  
TOWN OF GREENBURGH

By: /s/ Chad L. Klasna  
CHAD L. KLASNA  
(CK-7037)  
72 Eagle Rock Avenue, Suite 320  
East Hanover, NJ 07936  
(973) 618-9770

TO: James Michael Lenihan  
Lenihan & Associates, LLC  
Attorneys for Plaintiffs  
235 Main Street  
White Plains, New York 10601

Matthew Ian Gallagher, Esq.  
Senior Assistant County Attorney  
Office of the Westchester County Attorney  
148 Martine Avenue, Room 600  
White Plains, New York 10601

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

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INDIRA BOWEN, Individually, and  
INDIRA BOWEN, on behalf of her minor  
children, RAYLYN FAIRCLOUGH and  
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Plaintiffs,

v.

THE COUNTY OF WESTCHESTER,  
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OFFICERS JOHN DOES 1-10, in their  
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Defendants.

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Civil Action No.: 07 CIV 6277

**CERTIFICATION OF SERVICE**

I hereby certify that on August 7, 2008, I electronically filed the foregoing Answer, with the Clerk of the District Court using the CM/ECF system, which sent notification of such filing to the following:

James Michael Lenihan  
Lenihan & Associates, LLC  
235 Main Street  
White Plains, New York 10601

Matthew Ian Gallagher, Esq.  
Senior Assistant County Attorney  
Office of the Westchester County Attorney  
148 Martine Avenue, Room 600  
White Plains, New York 10601

I certify that the foregoing statements made by me are true. I am aware that if any of the foregoing statements are willfully false, I am subject to punishment.

/s/ Chad L. Klasna